

1  
2  
3  
4  
5  
6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**  
8

9 EDDIE JAMES THOMAS, JR.,

10 Petitioner,

11 vs.

12 JAMES BENEDETTI, et al.,

13 Respondents.  
14

Case No. 3:09-CV-00455-HDM- (RAM)

**ORDER**

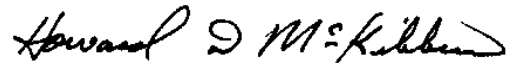
15 The Court directed Petitioner to show cause why this  
16 action should not be dismissed because he did not exhaust his  
17 available state-court remedies for all of his grounds. Order (#3).  
18 Petitioner has submitted a Motion to Stay (#6), asking the Court to  
19 stay the action while he returns to state court to exhaust his  
20 remedies there; Petitioner does not dispute the Court's finding  
21 that he has not exhausted all of his grounds. There are various  
22 methods by which the Court can stay a mixed petition, preserving  
23 the grounds that are exhausted while a person returns to state  
24 court to litigate the unexhausted grounds. See, e.g., Rhines v.  
25 Weber, 544 U.S. 269 (2005); King v. Ryan, 564 F.3d 1133 (9th Cir.  
26 2009). However, in Petitioner's case, all of his grounds are  
27 unexhausted. There is nothing left to stay while Petitioner  
28

1 returns to state court. Under the circumstances, dismissal without  
2 prejudice is the appropriate action for the Court to take.

3 IT IS THEREFORE ORDERED that Petitioner's Motion to Stay  
4 (#6) is **DENIED**.

5 IT IS FURTHER ORDERED that this action is **DISMISSED**  
6 without prejudice for Petitioner's failure to exhaust his available  
7 state-court remedies. The Clerk of the Court shall enter judgment  
8 accordingly.

9 DATED: November 30, 2009.

10 

11  
12 

---

HOWARD D. MCKIBBEN  
United States District Judge